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ELECTION COMMISSION INDIA

NOTIFICATION

New Delhi, the 7th September 1957

S.R.O. 2942.—Whereas the election of Shri Amar Nath (deceased) as a member of the Legislative Council of the State of Punjab, has been called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Raghbir Saran Sharma, 9224, Railway Road, Ambala City;

And Whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provision of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, LUDHIANA

ELECTION PETITION No. 6 OF 1956.

Shri Raghbir Saran Sharma, Advocate. Ambala.

Vs.

Shri Darbari Lal,
Dr. Om Parkash &
Shri Sohan Lal Chotani.

JUDGMENT

Two seats having fallen vacant in the Punjab Legislative Council in 1956, the Governor of the Punjab was pleased to call upon the electorates of the Ambala-cum-Karnal (Local Authorities) constituency to fill up those vacancies by Gazette Notification No. 859-Elc-56/C.369, dated 27th of February, 1956. These vacancies had arisen due to the retirement of the two sitting members in usual rotations. The petitioner, the three respondents and Shri Amar Nath (deceased) filed nomination papers before the Assistant Returning Officer Shri Major Karan Singh who was then posted as Divisional Inspector of Schools at Ambala on 9th March, 1956. As a result of the scrutiny held on 12th March, 1956, the nomination papers of Shri Sohan Lal Chotani respondent No. 3 were rejected on the ground that he had not given his number on the Assembly Electoral Roll in his nomination papers. Respondent No. 2 Shri Om Parkash withdrew his nomination on 15th March 1956, which was the date fixed for withdrawals. The petitioner, respondent No. 1 and Shri Amar Nath (deceased) were thus left in the

field to contest the election. As a result of the polling, the Returning Officer after counting the votes polled in the election fixed the quota at 6434 and announced the result as follows:—

1. Shri Darbari Lal.....71
2. Shri Amar Nath (deceased).....59
3. Shri Raghbir Saran....63.

2. Shri Darbari Lal respondent No. 1 having secured more than the requisite quota was declared elected and out of the votes secured by him second preferences were sorted out. By adding these second preferences Shri Amar Nath got 6512 votes while the votes of the petitioner Shri Raghbir Saran were 6327. Shri Amar Nath was accordingly declared as elected to the second seat. This result was duly published in Punjab Gazette Notification No. 2158-Ele-56/C.615, dated 23rd April, 1956. Not long thereafter, unfortunately, Shri Amar Nath the second successful candidate died on 21st May, 1956. The petitioner filed his return of election expenses with the Returning Officer on 7th June, 1956 and thereafter came up with this petition on 23rd June, 1956. He challenged the election on the grounds that the ballot of Shri Banarsi Dass Municipal Commissioner Radaur was improperly rejected by the Assistant Returning Officer on the ground that the same was received late, i.e., after 5 P.M. on the last date fixed for the poll although the same was presented before 5 P.M., that one of the voters in the constituency Dr. S. K. Sharma, District Medical Officer of Health Ambala had cast two votes, one as member of the District Board and the other as member of the Jamna Nagar Municipal Committee, that under Section 62(4) of the Representation of People Act, 1951, both these votes should have been declared void and should have been rejected; that the improper acceptance of these two votes and the improper rejection of the vote of Shri Banarsi Dass had materially effected the result of the election to the detriment of the petitioner; that the unmarked, unsigned, unattested ballot paper of Dewan Hukam Chand Municipal Commissioner, Karnal, was taken away by respondent No. 1 against the wishes of Dewan Hukam Chand, so that if that ballot has been used then the same was invalid and had materially affected the result of the election to the detriment of the petitioner; that the nomination papers of Shri Sohan Lal Chotani respondent No. 3 were wrongly and improperly rejected and that that had materially affected the result of the election to the detriment of the petitioner; that Shri Darbari Lal respondent No. 1 was disqualified on the date of the nomination from contesting or for being chosen as member of the Legislative Council of the State of Punjab because he was and is the Managing Director or Managing Agent of the Jagadhari Electric Supply Co. Ltd. Jagadhari, in which the Punjab Government is financially interested or he had any share or interest in a contract for the execution of work or performance of any services undertaken by the State Government; that Shri Darbari Lal respondent No. 1 was the President or Secretary of the Jesico Multi Purpose Sugar Co-operative Society in which the Punjab State Government had financial interest; that the election was not free and fair and corrupt practices like bribery and undue influence as detailed in the list had been extensively practised.

3. The corrupt practices in the list attached to the petition were detailed as follows:—

1. That respondent No. 1 and Shri Amar Nath (deceased) availed of the assistance and active help of Government servants including the Ministers of Punjab State as their election agents and supporters for securing the ballots from the electors in furtherance of their election and thus resorted to corruption and mal-practices by exercising their undue influence on them and even went to the extent of securing their ballots without being marked and attested.
 - (a) That the Local Bodies Minister without any justification or excuse and quite illegally cancelled notification of the Punjab Government imposing Octroi within the Municipal limits of Morinda Municipal Committee and thus showed undue favour and indulgence to the members (electors) and inhabitants of that Municipality. This was done after the receipt of ballots by the electors on 31st March, 1956.
 - (b) That the respondent No. 1 and Shri Amar Nath (deceased) through their party Ministers and Government servants brought to bear pressure and promised indulgence to the five members of Kalka Municipal Committee who had submitted their resignation on or about 10th of February and within time when the Local Govern-

ment could accept the resignation within 60 days of their tendering the same, by the 10th of April and thus secured their ballots. Likewise during this time they secured the ballots of the opposition group headed by Dr. Des Raj and against whom and whose group there were serious complaints pending assuring them indulgence and consideration. Similarly L. Bodh Raj M.C. Kalka's ballot was secured by telling him that no action would be taken on the complaint against him for his having not employed his brother-in-law in Municipal Committee Kalka and which fact too was denied by him in writing.

- (c) The respondent No. 1 himself and through his Minister friends and other public officers concerned promised indulgence in the matter of resignation of four members of Chhachhrauli Committee who had resigned and time for acceptance of whose resignations was expiring in the month of April. In the similar way, the question of S. Makhan Singh, Ex-President's resignation and the validity of the committee, wherein his resignation was accepted as also Amar Parkash, the present President of the Committee, matter of upholding his election were deferred in order to secure their ballots.
- (d) In the same way the matter of legality of the election of Shri Chaman Lal Vice President and Dila Ram's election as Vice President were prolonged and the votes of Dila Ram Group were secured for the benefit of respondent No. 1.
- (e) That Shri Amar Nath (deceased) took some members of the Panipat Municipality to Chandigarh to the Minister Incharge- Local Bodies, in order to get expedited the completion of the tube well of the committee and complaints of supersession suppressed and dealt with favourably whereon the Minister remarked "satisfy Pandit Ji (Pt. Amar Nath) and every thing for your Committee will be decided favourably". This was somewhere about the 1st or 2nd of April, 1955 that 7 or 8 members were taken to Chandigarh from Ambala in the first week of April to be introduced to S. Partap Singh Kairon, Chief Minister and their ballots offered without being marked on assurance to them that the claims of two of them and father of another member for Sub Registrarship at Ambala would be given sympathetic consideration.
- (f) That Pt. Mohan Lal, Minister Finance, Sir Gurbachan Singh Bajwa, Minister P.W.D. travelled to different stations in order to secure ballots for respondent No. 1 and Pt. Amar Nath (deceased). This was also in the last week of March and First half of the month of April, 1956.
- (g). That the return of election expenses filed by the respondent No. 1 was not correct to the knowledge of the respondent.
- (h) That out of a total pole of 201 votes 31 were officers employed under the State Government and nominated on the various Local Bodies of the constituency. Their votes were secured by the exercise of undue influence on them through the Ministers and other senior Officers of the Government in favour of respondent No. 1 and Pt. Amar Nath (deceased).

4. Respondents 2 and 3 did not put in their appearance in spite of service. Respondent No. 1 pleaded that the two reliefs claimed in the alternative by the petitioner were not admissible in law; that the petition was barred by time, that the allegation of corrupt or illegal practices contained in the list accompanying the petition did not set forth the names of the parties alleged to have committed the corrupt or illegal practices, that the dates and the places of the commission of those practices were also missing; that the petition was thus liable to be dismissed under section 90(4) of the Representation of the People Act 1951; that the nomination papers of Shri Sohan Lal Chotani respondent No. 3 were rightly rejected that the rejection of those nomination papers had not in any way prejudiced the petitioner; that the ballot of Shri Banarsi Dass was rightly rejected by the Assistant Returning Officer as it was presented after 5 P.M.; that the fixation of the quota at 6434 was not admitted but he secured the highest number of first—preference votes, that the averments contained in the list did not amount to such corrupt practices as could invalidate the election and that the alleged corrupt practices did not materially affect the result of the election to the detriment of the petitioner.

5. In replying to the details contained in the list of corrupt practices respondent No. 1 pleaded as follows:—

- “(a) Contents of sub para (a) are not admitted. Moreover it is liable to be rejected on account of its being vague and indefinite. Besides it is not relevant for the purposes of the petition.
- (b) Averments made in sub para (b) are incorrect and are denied. Moreover they are defective on account of their being vague and indefinite and for want of full particulars.
- (c) Averments made in sub para (c) are incorrect and are denied. Moreover they are defective on account of their being vague and indefinite and for want of full particulars.
- (d) Averments in sub-para (e) are incorrect and are denied. Moreover they are defective on account of their being vague and indefinite and for want of full particulars.
- (f) Averments made in sub-para (f) are incorrect and are denied. Moreover they are defective on account of their being vague and indefinite and for want of full particulars.
- (g) Averments made in sub-para (g) are incorrect and are denied. Moreover they are defective on account of their being vague and indefinite and for want of full particulars.
- (h) Averments made in sub-para (h) are incorrect and are denied. Moreover they are defective on account of their being vague and indefinite and for want of full particulars.”

6. When respondent No. 1 put in his written statement, the Tribunal framed the following preliminary issues on the basis of the preliminary objection:—

- 1. Whether the petitioner could not claim the two reliefs prayed for by him? (O.P. respondent No. 1).
- 2. Whether the petition was filed within limitation (O. P. petitioner).
- 3. Whether the allegations regarding corrupt and illegal practices mentioned in the list attached to the petition complied with the provisions of section 83 Sub-Section 2 of the Representation of People Act 1951? If not what was its effect? (O.P. petitioner).

7. These preliminary issues were disposed of by the Tribunal by its order dated 12th December, 1956. The Tribunal found that the petitioner was perfectly within his rights to claim the two reliefs in the alternative and that the petition could not be dismissed on that ground that the petition was perfectly within time; that the particulars of the corrupt practices furnished by the petitioner were not detailed enough. The Tribunal accordingly ordered the petitioner to amend the schedule with regard to the corrupt practices. It was detailed in the order that the petitioner should give the following particulars in respect of each of the corrupt or illegal practices alleged:—

- (1) The names of the parties alleged to have committed the corrupt or illegal practice?
- (2) The date of the commission of such corrupt or illegal practice and
- (3) the place of commission of each of said corrupt or illegal practice.

8. In response to the above mentioned order of the Tribunal the petitioner gave the particulars of corrupt practices as follows:—

- (a) The Local Bodies Minister Professors Sher Singh, without any justification or excuse quite illegally cancelled Notification No. 13839-C.55/386 dated the 3rd January, 1956, *vide* which oetrol was imposed within the municipal limits of Morinda Municipality by means of another notification No. 2544-C-56/13352 dated the 31st March, 1956, of Punjab Gazette, on the representation of Municipal Commissioners of Morinda and on their assuring and undertaking to make over their ballots to Congress candidates, respondent No. 1 and Shri Amar Nath (deceased). L. Jagat Narain Ex-Minister secured the ballots of Hakim Harbachan Lal Baldev Sahai, L. Dhanpat Rai and Narinjan Singh the President of the said Municipality for Pt. Amar Nath on or about the 3rd of April, 1956 and the votes of Jagdish Chand Sharma, S.V.P. and two others were secured by Shri Darbari Lal himself on or about the 5th April, 1956.

- (b) Five members of Kalka Municipality mentioned in para (d) of the list of corrupt practices were Ravel Chand, Raj Kishore, Partap Singh, Kishori Lal and Bodh Raj who had resigned and their resignations were pending decision by Punjab Government, when they were assured by the respondent No. 1 and Pt. Amar Nath, and L. Jagat Narain, the ex-Minister, that their resignations would not be accepted and they would be allowed to withdraw the same and no action would be taken against Bodh Raj for the complaint against him for having got his brother-in-law employed in the committee and against Raj Kishore for evasions of octroi if they made over their ballots to Pt. Amar Nath, Congress Candidate. They were further assured that action would be taken against Dr. Des Raj and his party on the complaints made by them. This happened at Kaika somewhere in or about the 3rd or 4th of April. Likewise the votes or ballots of the opposite party in the Kalka Municipality headed by Dr. Des Raj, viz., Kanti Chander, B. C. Datt and Dayal Ram were secured by Khan Abdur Guffar Khan M.L.A. on his assuring and that of Shri Darbari Lal respondent No. 1, that no action would be taken on the complaints received against him made by the other group. This was done near about the 9th or 10th of April 1956.
- (c) Respondent No. 1 openly gave out and assured the four members Jogdhian, Khidmat Rai, Makhan Singh and the fourth a Sikh member most probably S. Dharam Singh, by name, of Chhachhrauli Municipal Committee who had submitted their resignations, that the State Government would not pass any orders accepting their resignations and they would be allowed to withdraw the same and their complaint against Amar Parkash, the President and his group consisting of Kanti Mohan and Chhajju Ram would be decided favourably for them, if they delivered their ballots to him. Likewise Mr. Amar Parkash, the President of Chhachhrauli Municipality was unduly influenced by respondent No. 1 telling him that the irregularities that he had committed and which were complained against would be stifled and his election as President upheld, if he signed the ballot paper taken earlier from him. In this way Amar Parkash's ballot was got signed on or about the 15th of April 1956 and that of Jogdhian was obtained on or about the 18th of April, while those of other three members who had resigned were secured on or about the 5th of April. Apart from the above the then S.D.O. Jagadhari and the then Naib Tahsildar Chhachhrauli used their undue influence upon the Chhachhrauli members of the committee in order to coerce them to make over their ballots to Shri Darbari Lal, respondent No. 1.
- (d) The tussle between Shri Chaman Lal, S.V.P. Municipal Committee Sadhaura and his group and the then President's group Shri Chuhan Singh including Dila Ram, Bakhtawar Singh, Jai Parkash was prolonged and votes of the latter group were secured with a bribe of Rs. 900/- on 2-4-56 at Sadhaura.
- (e) That three members of Panipat Municipality Dr. Bahadar Chand Mr. Madan Mohan Mahajan and Mr. O. P. Singla were taken all the way to Chandigarh on or about the 17th of March 1956 or a little after in order to get the proposal for supersession of their Municipality negatived and other complaints against it dismissed. When these were ushered in before Professor Sher Singh by Pt. Amar Nath and Panipat Municipality's matter placed before him, the Hon'ble Minister remarked "Every thing will be alright if you please Pandit Ji" (meaning thereby Pt. Amar Nath by giving ballots).....
- That Shri Siri Ram, Shri Inder Lal Machanda, Shri Som Nath Gupta, Dr. Brij Behari Lal, Shri Ram Dhan, Shri Wazir Chand, S. Mansa Singh, Shri Hans Raj Suri, Shri Raja Ram and S. Karora Singh of Ambala Municipality were taken to Chandigarh on 4th of April by Shri Darbari Lal and produced them before S. Partap Singh Kalron Chief Minister and introduced before him as members of the Ambala Municipality who had made over their ballots for Congress candidates. Shri H. R. Suri and father of Dr. Som Nath and L. Das Raj Gupta of the aforesaid group, who was not in Ambala on that date, but whose votes were also secured were candidates for Sub Registrarship. They were assured of being rewarded for voting for Congress candidates, i.e., appointment as Sub-Registrar and that action would be taken against the President's Party in Ambala City and his removal brought about.

(f) It is clear and needs no elucidation.

(g) The return of election expenses filed by Shri Darbari Lal, respondent No. 1 did not contain the item of money spent by way of bribery in securing the votes of Shri Dayal Chand and a Balmeek member Umra and another Sikh member of Kharar Municipality on payment of Rs. 1,000/- on 9th April 1956 and of Sadhaura Municipality of the President Chuhar Singh, L. Jai Parkash, Bakhtawar Singh and Dila Ram against the payment of Rs. 900/- on 2nd May 1956 that of Harijan Member of Pundri Municipality on the 4th April 1956 for Rs. 100/- and Jetha Ram of Jagadhari Municipal Committee for Rs. 150/- on 1st April 1956.

(h) The vote of Shri Nawal Kishore of Chhachhrauli Municipality was secured by a responsible member through exercise of undue influence by his immediate superior Under Secretary in the Popsu State Secretariat where the former was recently employed. Undue influence and pressure was brought to bear upon Lakhpat Rai of M. C. Karnal Fuel wood Contractor of Karnal who was threatened on 2nd April 1956 by the D.F.O. and Industries Officer, Panipat on pain of being black listed. The members of Chhachhrauli Municipality were unduly influenced at Chhachhrauli details of which have already been given.

Besides these instance all the Government Officers who had a right of vote were influenced by some or other Officer or the Minister.

9. When these better particulars were put in on 14th January 1957, the petitioner also filed an application under Order 10 rule 1 C.P.C. for the personal examination of the respondent, Shri Darbari Lal. The case was accordingly adjourned and the respondent was also given an opportunity to file a further written statement.

10. Respondent No. 1 having taken exception to the better particulars filed by the petitioner with regard to the alleged corrupt practices the Tribunal disposed of the matter by its order dated 16th January 1957. It was held that the amendment made in para 11 of the petition by the petitioner was absolutely unauthorised and that the Tribunal would confine the enquiry to old para 11 of the petition; that the petitioner had added something to clause (1) of the corrupt practices and that those added words would be deemed deleted, that the amended clause (h) of the better particulars would stand, that the amendment to clause (c) was unjustified and would be deemed deleted; that the petitioner would have to confine himself to the original clause (d) of the particulars; that there was nothing wrong about clauses (e) and (f).

11. After giving the above decision, the Tribunal proceeded to examine Shri Lachhmi Chand counsel for respondent No. 1. He stated that respondent No. 1 was not the Managing Director, nor the Managing Agent of the Jagadhari Electric Supply Co. Ltd. on the date when the nomination papers were filed or when the election was held; that he was not holding that office even on that date; that there was no contract between the Jagadhari Electric Supply Co. and the Punjab Government for the supply of bulk energy; that respondent No. 1 was not the Managing Secretary or the President of the Jesico Multi Purpose Sugarcane Co-operative Society and that the said Society had not taken any loan from the Central Co-operative Bank.

12. The above recited course of pleadings lead to the following issues:—

1. Whether Shri S. K. Sharma, D.M.O.H., Ambala cast two votes, one as Member of the District Board Ambala and the other as member of the Municipal Committee Jamna Nagar and whether the same was illegal?
2. Whether the vote of Shri Benarsi Dass of Municipal Committee Radaur District Karnal was improperly rejected by the Assistant Returning Officer although the vote was submitted in time?
3. Whether the ballot paper of Shri Hukam Chand of Municipal Committee Karnal was taken away by Shri Darbari Lal respondent against the former's wishes?
4. Whether the nomination paper of respondent No. 3 Shri Sohan Lal Chotani was wrongly and improperly rejected and it materially affected the result of the election to the detriment of the petitioner?

5. Whether Shri Darbari Lal respondent No. 1 was disqualified on the date of nomination from contesting the seat for the Legislative Council because of what was alleged in para. 11-E of the petition?
6. Whether respondent No. 1 was guilty of corrupt and illegal practices detailed in the schedule attached to the petition as amended upto date?
7. Whether the entire bye-election was void?
8. If not to what other relief was the petitioner entitled?

Issue No. 1.—Shri S. K. Sharma was examined as P.W. 1 in this case. He stated that during the bye-election in dispute he got two ballot papers, one in his capacity as member of the District Board Ambala and the other in his capacity as member of the Jamma Nagar Municipal Committee. He further stated that he used both those ballots. The Tribunal verified from the records of the election that both these ballots had been used by Shri S. K. Sharma. The parties did not dispute this question of fact. The only point canvassed before the Tribunal in this connection was as to whether both these votes had to be rejected as invalid or both or any of those could be taken into consideration. The reliance of the petitioner in this connection was on Section 62(4) of the Representation of People Act of 1951. That sub-section reads as follows:—

“No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void.”

This provision in the Representation of People Act, is obviously very clear but the contention of the counsel for respondent No. 1 was that this provision did not apply to Legislative Council election. He tried to point out that there was some difference between the words “person” and “electorate” those used in the Representation of People Act, 1951 and that that definition indicated that this rule did not apply to Legislative Council elections. We were not able to appreciate the difference that was sought to be brought out between these two words by the learned counsel. He referred us in this connection to Articles 170 and 171 of the Indian Constitution and also to Articles 326 and 327 thereof. So far as Article 170 goes it only says that members to the Legislative Assembly shall be chosen by direct election. Article 171 refers to the composition of members of the Legislative Council and under sub-para 3 tabulates as follows. The only clause relevant for purpose and which was read out to us from this Article reads as follows:—

- (a) “As nearly as may be, one third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify.” While stressing the above stated provisions the counsel argued that the words “electorate” occurring here means something different from the word “person” occurring in Section 62(4) of the Representation of People Act. A bare perusal of the different provisions of this Act shows that the word “person” is very commonly used in those and whenever it is intended to refer to any individual or to the exercise of the right of vote of any individual, while the word, “elector” or “electorate” are used when it is intended to refer to the person or number of persons entitled to exercise the right of vote. It is not then possible to hold that in these provisions the word “person” means some one who could not be an elector.

13. Counsel for respondent No. 1 then referred us to sections 17, 18, 26 and 27 of the Representation of People Act, 1950. We have been through these sections and we do not find anything in these sections which could lend support to the contention of the learned counsel. Section 17 only says that no person shall be entitled to be registered in the electoral roll for more than one constituency. Section 18 says that no person shall be entitled to be registered in the electoral roll for any constituency more than once. Nobody disputes any of these two. Section 26 only refers to the preparation of electoral rolls for Assembly constituencies and section 27 refers to the preparation of electoral rolls for Council constituencies. These sections then do not at all help us to hold that section 62(4) of the Representation of People Act 1951 does not apply to the Legislative Council elections.

14. Last of all counsel for respondent No. 1 referred us to section 169 of the Representation of People Act in this connection. He drew our attention to clause (1) of that section. That clause reads as follows:—

"The procedure as to voting to be followed at elections held in accordance with the system of proportional—representation by means of the single transferable vote." This clause does not lay down any rule of law. In fact—section 169 only enumerates the points on which rules under the Act could be framed by the Central Government.

15. As against these contentions of the learned counsel for the respondent we have some other provisions in the Acts of 1950 and 1951 which clearly support that section 62 (4) of the Representation of People Act 1951 applies to Legislative Council elections as well. Sub-section (4) to section 27 of the Representation of People Act 1950 reads as follows:—

"The provisions of sections 15, 16, 18, 20, 22, 23, 24 and 25 shall apply in relation to council constituencies as they apply in relation to Parliamentary constituencies".

Now section 18 in this Act clearly provides that no person is to be registered more than once in any constituency. This clearly means that it was not intended by the framers of these two Acts that any person could exercise two votes in the same constituency in Legislative Council elections. There could then be no two opinions on the point that section 62 (4) of the Representation of People Act applies to Legislative Council elections. The use of the two votes by Shri S. K. Sharma thus made both his votes void and those should have been excluded by the Returning Officer while declaring the result. The issue is decided accordingly in favour of the petitioner.

16. *Issue No. 2.*—It is not disputed that the last date for submitting ballot papers in connection with the biennial election in dispute was 18th April 1956 and that the ballot papers could be presented on that date upto 5 P.M. The relevant rule in this connection is rule 85(2) of the Representation of People Act. It reads as follows:—

"The elector shall then place the ballot paper in the envelope close the envelope and enclose it in the cover and send the cover to the Returning Officer in accordance with the instructions contained in the letter so as to reach him before 5 P.M. on the date fixed in this behalf by the Election Commission. Any cover which is not received by the Returning Officer before 5 P.M. on the date so fixed shall be rejected....."

The Returning Officer for the biennial election in dispute was Shri Sarup Krishan who is now the Chief Electoral Officer of the Punjab State and who appeared as P.W. 7. He stated that he had delegated his powers for receiving the ballots to his Assistant Returning Officer, Major Karan Singh Malik then Divisional Inspector of Schools Ambala. He further stated that according to the notification issued by the Government ballot papers with regard to this biennial election were to be received upto 5 P.M. of the 18th of April 1956. It is not disputed that Shri Banarsi Dass who figured as R.W. 1 in this connection had a right of vote in this constituency. He stated as R.W. 1 that he had received the ballot paper in this connection and that he naturally went with that ballot paper in the company of the petitioner to the Office of the Inspector of Schools on 18th April 1956. The ballot paper stands marked as P.W. 13/1 and the slip about the attestation of his signatures is Ex. P.W. 13/2 on the record. There is thus no dispute that Shri Banarsi Dass who was a voter in the constituency had gone with his ballot paper to the Officer who was authorised to receive ballot in connection with this election. The only question for determination under this issue is whether he presented this ballot paper to the Officer concerned by 5 P.M. or after 5 P.M. The most important witness in this connection is P.W. 3 Major Karan Singh Malik who is now the Assistant Director of Public Instructions and who was then the Inspector of Schools Ambala. He clearly stated that the ballot paper was brought to him and that the time then was one minute past 5 P.M. by his watch. He however admitted that Shri Raghubir Saran—petitioner at that time contended that the ballot had been tendered before 5 P.M. and that the petitioner in support of his contention pro-

duced some watches one of which belonged to his Deputy Inspector of Schools Shri Amar Singh Pannun. He further stated that on the suggestion of the petitioner he rang up the Telephone Exchange in order to ascertain the correct time and that he rang up the Enquiry Office at Railway Station Ambala Cantt as well. He further made it clear that the time that he got from Telephone Exchange was 2 or 3 minutes less than that on his watch and that the time obtained from the Enquiry Office at Ambala Cantt. Railway Station tallied with the time of his watch. If the Telephone Exchange time could then be adopted as the standard time then one would say that this ballot paper was definitely presented before 5 P.M. and as such should not have been rejected.

14. The word "time" could not be found to have been defined anywhere. Counsel for the petitioner stated at the bar that he made all sorts of enquiries in this connection from available sources and that he was not able to get any guidance in this connection. He was able to quote us Ordinance No. 6 of 1943 which appears in para 7 of the Lahore Law Times for 1943 at page 12. This Ordinance does not help us to solve this point as this Ordinance was only intended to be used for interpreting those statutes where the words "Indian Standard Time" was used. We are, however, clear that the time 5 P.M. mentioned in the rules was intended to be some standard time and not any time by anybody's watch. The only standard time that was suggested to us was the Indian Standard Time. We put pointedly to the counsel for the respondent if he could point out to us any other standard of judging correct time and he had to concede frankly that he could not suggest any. The only reasonable course then left is to hold that 5 P.M. mentioned in the rules refers to 5 P.M. according to the Indian Standard Time. In order to know as to what is the Indian Standard Time we have to turn to para 112 of Chapter II of the Posts and Telegraphs Manual Volume XI, 1953 edition. That para reads as follows:—

"The day is a single cycle of 24 hours, beginning at midnight. The actual moment of midnight belongs to the day just ending and is termed 24 h. For all purposes, Indian Standard Time which is 5 hours 30 minutes in advance of Greenwich time (82.30 East), is kept by all Telegraph Offices in India".

In all dealings with the public, Standard Time must be used, thus the time "Sent out" marked on the Received Message Delivery Sheet (Form T.I. 153, or, in case of Licensed Offices, L.T.10), must be entered in Standard Times as 9-30, 15-40 and so on.

Indian Standard Time is transmitted every day except on Sundays from the Calcutta G.T.O. to all offices in direct communication with it. Calcutta will commence to send a succession of bars daily as 15-58 hours at intervals of one second. The distant offices will then start sending bars at the same regular intervals to all connected offices and those in turn to their connected offices. All offices receiving the time signals must pay strict attention. At 16 hours precisely (Indian Standard Time) the signals will cease when all offices in India must set their clocks to the right time. Standard Time must be given to connected Railway offices whenever applied for."

15. A bare perusal of the above para. shows that all Telegraph Offices in India correct the times maintain by them at 4 P.M. every day and that that time is the Indian Standard Time. It was contended by the counsel for the respondent that this time refers to the time available in the Telephone Offices in India and has nothing to do with the time that is available with Telephone Offices—The word "office" occurring in the above recited above of the Manual stands defined in para. 5 of the Manual and the definition reads as follows:—

"Office means any Telegraph Office open for paid traffic....." In order to further understand as to what the words "Telegraph Office" in this definition means, we have to turn to the definition of "Telegraph" as given in the Posts and Telegraphs Manual Volume I 1953 Edition. There we find that in Section 3 of the Indian Telegraph Act the word "Telegraph" is defined as follows:—

"Telegraph means a electric, galvanic or magnetic telegraph and includes appliances and apparatus for (making, transmitting or receiving) telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism".

16. It is thus clear that the words "Offices" in para. 112 quoted above from the Manual in question includes Telephone offices as well. We are then clear that according to the Indian Standard Time it was not 5 P.M. when Shri Benarsi Dass presented his ballot to Major Karan Singh Assistant Returning Officer.

17. Counsel for the respondent argued that the statement of Major Karan Singh P.W. 3 could not be believed in face of the statement of P.W. 9 Shri Jagan Nath, R.W. 1 Shri Banarsi Dass, R.W. 2 Shri Om Parkash and R.W. 3 Shri Amar Singh Pannun. He argued that if the ballot had been presented at one minute past five P.M., then Major Karan Singh would have noted in the chit attached to the ballot paper that it was presented one minute past five P.M. and would not have simply entered that it was presented after 5 P.M. After 5 P.M. not clearly means one minute past five P.M. The material fact was 5 P.M. and as such we do not see any force in this argument of the learned counsel. The pleadings of the respondent himself show that he did not attach any importance to this fact. He himself referred to the time as after 5 P.M. and did not mention that it was so many minutes after 5 P.M. P.W.9 Shri Jagan Nath no doubt stated that he was standing in the verandah of the office building after 5 P.M. when the petitioner came with the ballot paper in question and that he told him that the time was up. He, however, admitted that the petitioner told him at that time that there were still two minutes to five at that time. This witness did not at all state as to whether the time was actually looked up when the ballot paper was presented to Major Karan Singh and as to whether it was not one minute past five P.M. at that time by the watch which was regulating the time of polling in the office. It is then not possible to attach any weight to his statement as against the definite statement of Major Karan Singh. R.W. 1 Shri Banarsi Dass could not easily be relied upon. He was holding his ballot paper till the last moment and although he ultimately entered the first preference in the ballot paper for the petitioner, he has come up in the witness box to state that he did not want to vote for him. This shows that he is an easily approachable witness and can be secured by anybody. His statement thus could not be preferred over the statement of Major Karan Singh. R.W.2 Om Parkash stated that this disputed ballot paper was handed over in his presence at 10 or 12 minutes past 5 P.M. This could not be believed in view of the statement of the other witnesses which clearly shows that the time was very near 5 P.M. R.W.3 Shri Amar Singh Pannun has stated that he attested the signatures of Banarsi Dass on Ex.P.W.13/2, after 5 P.M. He stated that he had done it on the identification of his Head Clerk. Ex.P.W.13/2, however shows that he did it on the identification of the petitioner. He had identified the signatures of other voters also during this election and he would not have proceeded to attest it if it had been really past 5 P.M. at that time. He has stated that his watch was not even referred to Major Karan Singh but we find it difficult to believe in the fact of the clear statement of P.W. 3 Major Karan Singh and P.W. 9 Shri Jagan Nath. We are thus clear that the ballot paper was presented to Shri Karan Singh at 1 minute past 5 P.M. according to the watch of Major Karan Singh but a minute or two before 5 P.M. according to the Indian Standard Time. The ballot paper was then obviously tendered in time and was wrongly rejected. The ballot was first preference for the petitioner. Its rejection also worked to the prejudice of the petitioner. The issue is decided accordingly in favour of the petitioner.

18. *Issue No. 3.*—Shri Hukam Chand appeared as P.W. 2. He did not at all support the allegations of the petitioner. The ballot paper of Shri Hukam Chand was not at all traceable in the ballot papers which were taken into consideration by the Returning Officer in declaring the result. During the arguments counsel for the petitioner urged nothing in connection with this issue. The issue remained unproved and is decided against the petitioner.

Issue No. 4.—19. The rejected nomination paper of Shri Sohan Lal Chotani is Ex. P.W.7/F on the record. The order of the Returning Officer rejecting this nomination paper is Ex. P.W.7/F. A perusal of this order shows that the nomination paper was rejected on the ground that serial No. 11 entered in the nomination paper as the number of Chotani on the electoral roll was incorrect. It is not disputed that No. 11 entered in the nomination paper was the correct number of Shri Sohan Lal Chotani in the roll of the Ambala-cum-Karnal (Local Authorities) constituency but in the nomination paper the number to be entered was the number of the Assembly constituency electoral roll. The petitioner admitted that this mistake was there but it was argued on his behalf that this mistake was so technical that the nomination paper should not have been rejected on this ground. Proper guidance in this connection is available in section 38(4) of the Representation of People Act, 1951. That sub-section reads as follows:—

“The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character”.

20. The point for determination now is as to whether this was such a technical defect as should have been ignored at the time of the rejection of the nomination paper. Admittedly the nomination paper contained the number of Shri Sohan

Lal Chotani as it was entered in the Ambala-cum-Karnal (Local Authorities) constituency. There could not be much dispute about his identity. The Returning Officer however rejected the nomination paper by relying on a decision of the Election Tribunal of West Bengal in *Badrudduja Sayed Vs. Mohammed Khuda Baksh and others*. In that case the name of the constituency and the serial number of the candidate in the roll of that constituency were missing.—

Obviously it could not from that nomination paper be said as to for which constituency that nomination paper was being filed. That case is thus distinguishable. We have a case reported as I.E.L.R. 77 which is practically on all fours with the facts of the present case. This election petition also related to an election of Local authorities constituency. The candidate in his nomination paper have the name of the constituency for which he was standing as a candidate and his number in the roll of that constituency instead of the name of the Assembly constituency in which his name was entered as elector and his number in the roll of that constituency. It was held that it was a very technical defect and was not a defect of such a substantial character as could justify the rejection of the nomination paper. We are thus of the view that the defect in the nomination paper in this case was not substantial enough to justify the rejection of the nomination paper. The Returning Officer wrongly rejected the nomination paper.

21. Section 100(c) of the Representation of People Act, 1951 provides that before declaring an election to be void on the ground of improper acceptance or rejection of any nomination paper the Tribunal must find as a fact that the result of the election has been materially effected by the improper acceptance or rejection of any nomination. We have now got to see as to whether there is such material on the present record as could justify a finding that the rejection of the nomination paper of Shri Sohan Lal Chotani has materially affected the result of the election in dispute. Counsel for the petitioner quoted to us I.E.L.R. 154 for the proposition that where there has been an improper rejection of the nomination of a candidate the election can be set aside without any affirmative proof that the rejection of the nomination had materially affected the result of the election. The same view was shared by another Election Tribunal in a case reported as 2 E.L.R. 88 at page 100. The relevant portion reads as follows:—

The next question for consideration is whether the result of the election has been materially affected by the improper rejection of the nomination of the respondent No. 6. There is a general presumption that in the case of improper rejection of a nomination the result of the election must be deemed to have been materially affected. In the case of an improper rejection of a nomination the whole electorate is deprived of its right to vote for a candidate who was qualified to stand for election. Nobody can say with certainty what would have been the result if the candidate whose nomination was improperly rejected, was permitted to contest the election. There are numerous cases in which this general presumption has been applied by different Election Tribunals".

22. As against the above stated authorities counsel for respondent No. 1 banked on a case reported as 9 E.L.R. 36. It was held in this case by a Nasik Election Tribunal that under the Indian Law there was no irrebuttable presumption that the result of the election had been materially affected when a nomination paper had been wrongly rejected. It was further held that under section 100(1) of the Representation of People Act 1951, the Tribunal had to form an opinion in each case on its own facts, as to whether the result of the election had been materially affected. In this case the person whose nomination papers were rejected has not made any complaint of that effect. Assuming that a presumption arises from the rejection of the nomination paper that the result of the election was effected, we have enough material in this case in the statement of the petitioner himself to show that in this case the presumption stood clearly rebutted. Shri Raghbir Saran petitioner as P.W. 13 stated that he and Mr. Chotani were both members of Jan Sangh and that he and Mr. Chotani had both fought the Punjab Legislative Assembly election on Jan Sangh ticket. This explains as to why Mr. Chotani did not complain against the rejection of his nomination paper for his party candidate Shri Raghbir Saran was still there to fight it. If Shri Chotani had continued in the field he would have in fact taken away some of the votes which have gone to the petitioner. The presumption if any thus available stood sufficiently rebutted and it was incumbent upon the petitioner to establish definitely on the present record that this rejection of the nomination paper of Mr. Chotani had resulted to his prejudice. It is not thus possible to hold that the rejection of the nomination paper of Mr. Chotani in any way prejudiced the result of the election against the petitioner. The issue is decided accordingly against the petitioner.

Issue No. 5.—23. Counsel for the petitioner made a statement on 24th July, 1957, withdrawing most of the allegations covered by this issue. The only argument advanced by him in connection with this issue was based on the last line of section 7(d) of the Representation of People Act 1951. Clause (d) of section 7 reads as follows:—

"If whether by himself or by any person or body of persons in trust for him or for his benefit or on his account he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any service undertaken by the appropriate Government."

24. The stress of the counsel for the petitioner was on the word "or the performance of any service undertaken by the appropriate Government". He argued that the Punjab Government had undertaken to supply electric energy to the people of Jagadhari and that that function was undertaken by the Jagadhari Electric Supply Co. as an licensee. We put it to the counsel for the petitioner to show us any law or notification by which the Government had undertaken to supply electric energy to the people of Jagadhari. He had to confess frankly that he could not point out any such law or notification. There is thus no proof on the present record that the Government ever undertook to supply electric energy to the people of Jagadhari. Thus this is not proved at all that Shri Darbari Lal respondent No. 1 was disqualified on the date of nomination from contesting the seat. The issue is decided accordingly.

Issue No. 6.—25. There could be definite evidence in this connection but the petitioner has contended by putting himself into the witness box to prove all the alleged corrupt and illegal practices. His statement shows that his evidence is not based on personal knowledge and being hearsay is inadmissible in evidence. The issue thus could not be held to have been proved at all. The issue is decided against the petitioner.

Issue No. 7.—26. The declared result of the biennial election in dispute is available at page 221 of the file which was produced by P.W. 8 Shri Ishar Singh General Assistant of the Office of the Commissioner Ambala Division. According to this result sheet Shri Darbari Lal had secured 71 first preference votes, Shri Amar Nath deceased had secured 59 first preference votes and Shri Raghbir Saran petitioner had secured 63 first preference votes. In view of our finding with regard to the ballot of Shri Benarsi Das the first preference secured by Shri Raghbir Saran petitioner mount to 64. In view of our decision with regard to the two void votes of Shri S. K. Sharma the first preference votes of Shri Darbari Lal respondent No. 1 scale down to 69. The total number of valid votes thus comes to 192. If the national value of these votes be calculated according to sub-rule 3 of rule 121 and therefore quota ascertained under rule 122 the necessary quota for the candidate to be declared elected would come to 6401. Shri Darbari Lal respondent was therefore properly declared elected. However so far as the deceased Amar Nath was concerned he had only secured 59 votes the notional value of which was 5900. Now the surplus of Shri Darbari Lal respondent according to our calculations would come to $6900 \text{ minus } 6401 = 499$. As this surplus arises out of the original votes it was to be distributed between the two other candidates according to the next preference recorded thereon. Now out of 69 votes polled in favour of Shri Darbari Lal in 66 the next preference recorded was in favour of Shri Amar Nath deceased while in the remaining three the next preference was recorded in favour of the petitioner, Shri Raghbir Saran. None of the vote was altogether exhausted. The value of the surplus to be transferred would come to $499/69 \text{ i.e. } 7$. Now the value of the papers to be transferred to Shri Raghbir Saran would come to $63 \times 7 = 21$ and those of the papers to be transferred to Shri Amar Nath on account of this second preference would come to $66 \times 7 = 462$. When the above values are added to the value of the original votes obtained by these candidates the result should be as follows:—

1. The value of Shri Amar Nath's votes = $5900 + 462 = 6362$, and
2. Shri Raghbir Saran $6400 + 21 = 6421$.

As Shri Raghbir Saran exceeded the above stated quota he should have been declared elected in place of Shri Amar Nath. This issue is therefore decided accordingly.

Issue No. 8,—27. In view of our above stated findings under section 98(c) of the Representation of People Act 1951 we declare the election of Shri Amar Nath (deceased) to be void and further that the petitioner Shri Raghbir Saran to have been duly elected in the biennial election in dispute to the Punjab Legislative Council. However in view of the fact that the petitioner has not been able to attack the position of the only contesting respondent Shri Darbari Lal we leave the parties to bear their own costs.

Announced in open court in the Sessions court at Ambala.

(Sd.) K. S. CHADHA, Chairman.

(Sd.) BADRI PRASAD PURI, Member.

(Sd.) D. D. SETH, Member.

The 26th July 1957.

[No. 32/6/56.]

By order,

DIN DAYAL, Under Secy.

